

**PLANNING COMMISISON STAFF REPORT  
CONDITIONAL USE PERMIT (CUP-14-02, ANDEREGG)  
TYPE III - LEGISLATIVE  
LAND USE APPLICATION**

Application Submitted:	September 15, 2014
Application Complete:	September 26, 2014
Public Notice Mailed:	September 26, 2014
Notice Posted at City Hall:	October 6, 2014
Notice Posted on Web:	October 6, 2014
Notice Published in Paper:	October 9, 2014
Staff Report Date:	October 13, 2014
Public Hearing Date:	October, 21, 2014

**BASIC DATA**

Applicant/ Property Owner:	Fred Anderegg
Property Location:	1585 Juniper Street
Assessors Map and Lot:	15-04-32-22-01800
Property Area:	.57 acres
Zoning:	General Commercial, G-C
Plan Designation:	Commercial

**REQUEST**

The applicant wishes to convert a portion of an existing structure from a ceramics shop/studio offering sales and classes into a Day Care Facility and preschool. The request to operate this use, under 17.35.020 is reviewed as a Conditional Use.

**BACKGROUND**

The site is located at 1585 Juniper Street. The site is developed with existing structures. The lot can be accessed via an existing gravel driveway from Juniper Street on the north side of the building. The current Junction City Transportation System Plan designates Juniper Street as a Minor Collector. The address was verified using Lane County Assessment and Taxation records.

The site is zoned General Commercial. The surrounding area is fully developed. The subject site abuts General Commercial (GC) to the east, west, north and south. The north property line also abuts Light Industrial (M1). To the west of the site are single-family homes, Laurel Park and Laurel Elementary School. To the south is a home with a small business and to east are single-family homes. To the north are two (2) storage facilities.

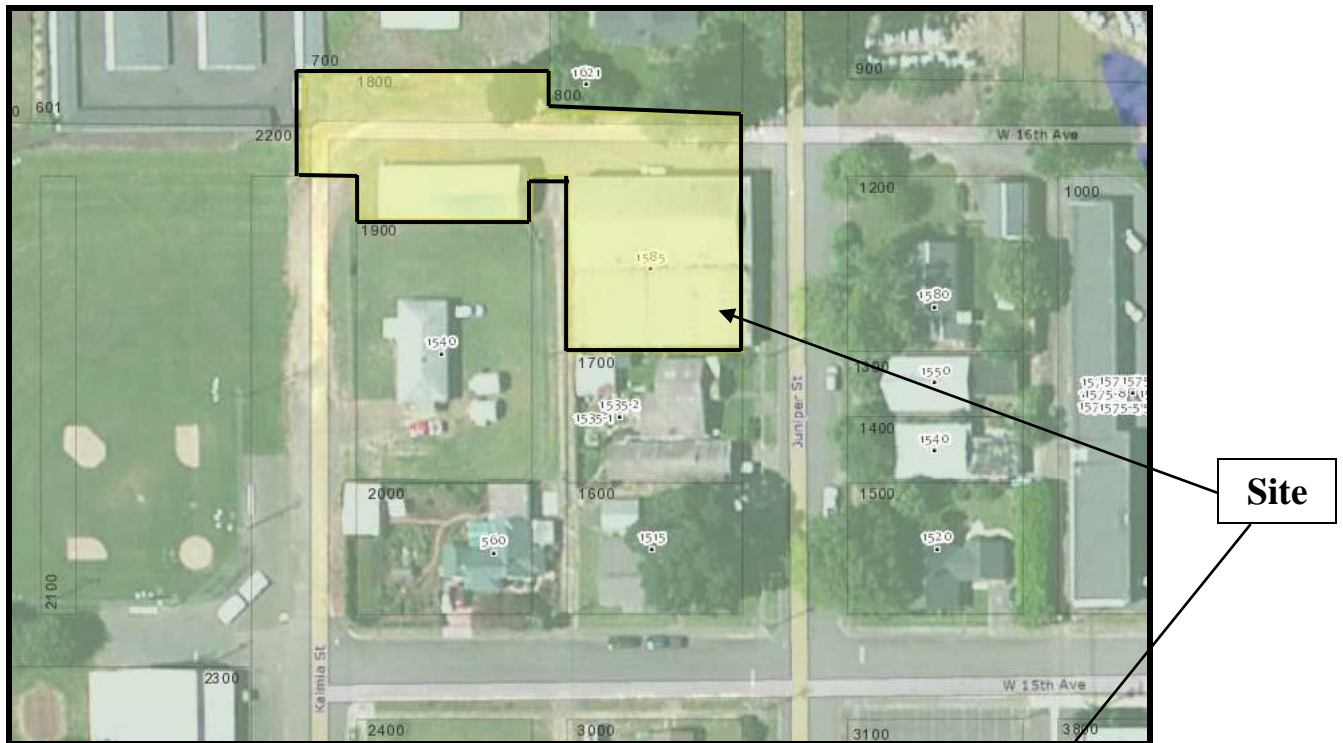


Figure 1. Location Map

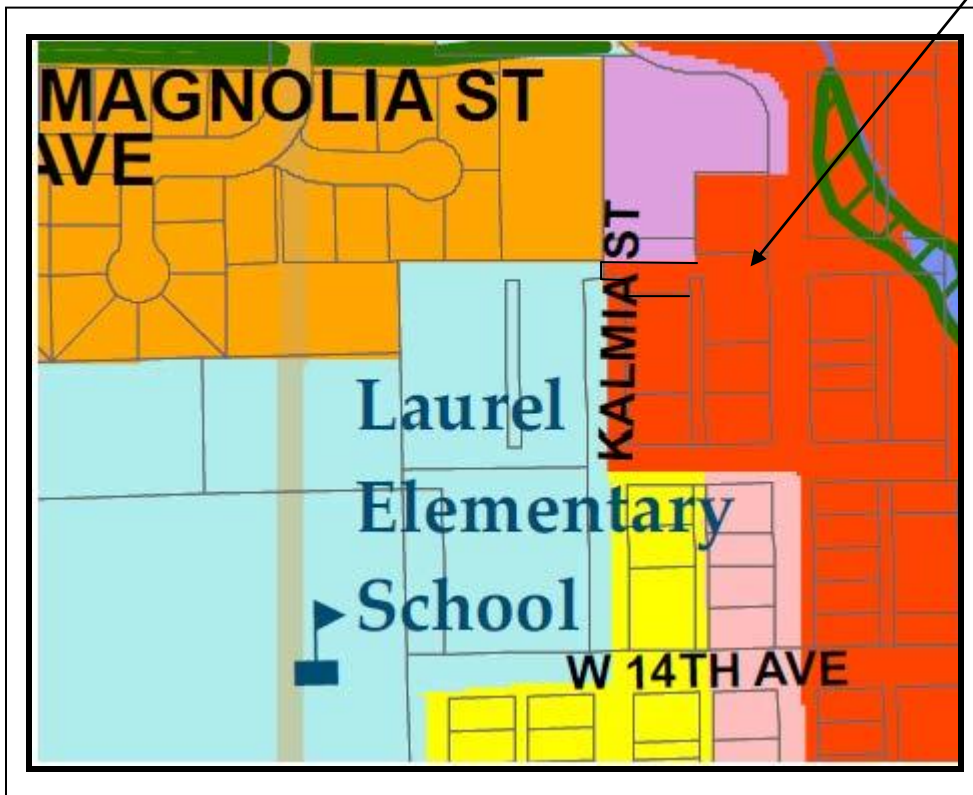


Figure 2. Zoning Map

The proposal is for a day care center. Junction City Municipal Code (JCMC) Chapter 17.05 defines as follows:

*“Day care facility” means any facility that provides day care to children, including a child day care center, group day care home, home of a family day care provider, including those known under a descriptive name such as nursery school, preschool, or kindergarten.”*

At first brush it would appear Day Care Centers are permitted outright in the General Commercial zone, because uses permitted outright in the C2 (Central Commercial) zone area also permitted outright in the General Commercial zone (JCMC 17.30.010(A)). The uses permitted outright listed in JCMC Chapter 17.30 (C2), does list Day Care Centers among the many uses permitted outright in the C2 and thus the General Commercial zone. However, under Conditional Uses in the General Commercial (17.35.020(D)), Day Care Centers are listed.

The Municipal Code provides for such situations and under 17.150.150, Interpretation, the codes states,

*“Where the conditions imposed by any provision of this title are less restrictive than comparable conditions imposed by any other provisions of this title or of any other ordinance, resolution or regulation, the provisions which are more restrictive shall govern.”*

Thus, the applicant has submitted for Planning Commission review, a Conditional Use Permit application to add a Day Care Center in the General Commercial zone.

A search of State of Oregon registered Day Care Centers in Junction City located nine (9) centers within the city limits. None of the nine (9) centers reviewed were located in the General Commercial zone (Exhibit V).

#### **Conditional Use:**

**“Section 97. Authorization to Grant or Deny Conditional Uses. Conditional uses are those uses which may be appropriate, desirable, convenient or necessary in the district in which they are allowed, but which by reason of their height or bulk or the creation of traffic hazards or parking problems or other adverse conditions may be injurious to the public safety, welfare, comfort and convenience unless appropriate conditions are imposed. Uses designated in this ordinance as conditional uses may be permitted, enlarged or otherwise altered upon authorization by the Planning Commission in accordance with the standards and procedures set forth. In the case of a use existing prior to the effective date of this ordinance and which is classified in this ordinance as a conditional use, any change in use or in lot area or any alteration of the structure shall conform to the requirements dealing with conditional uses.**

**In permitting a conditional use, the City may impose, in addition to those standards and requirements expressly specified by this ordinance, any additional conditions which the City considers necessary to protect the best interests of the surrounding property or the**

City as a whole. These conditions may include, but are not limited to, increasing height of buildings; controlling the location and number of vehicle access points; increasing the street width; increasing the number of off-street parking and loading spaces required; limiting the number, size and location of signs; requiring screening and landscaping to protect adjacent property; and recording such conditions on the property with the County Clerk.”

Day Care Centers are a Conditional Use in the General Commercial zone.

## **STAFF FINDINGS**

### ***17.35.030 Development review.***

***In a GC zone, development review by the city administrator or designee shall be required to ensure compliance regarding GC standards.***

The applicant has submitted a Development Review application concurrent with a Change of Use application and this Conditional Use Permit request.

### ***17.35.080 Parking.***

***In a GC zone, parking lots shall comply with the following standards:***

***A. Off-street vehicle parking must comply with the landscaping, size, and pedestrian circulation standards specified in Chapter 17.90JCMC.***

***B. Parking Lot Siting. To minimize the visual impact of parking areas, new commercial developments shall site off-street parking lots to the rear or side of the building where site size and configuration permit. [Ord. 1178 § 3, 2007; Ord. 1116 § 1, 2003; Ord. 950 § 44A, 1991.]***

The proposed Conditional Use requires a minimum number of off-street parking spaces as follows:

c. Child care centers having 13 or more children	One space per 400 square feet of floor area plus one space per two employees.
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The existing retail commercial space requires a minimum number of off-street parking spaces as follows:

a. Retail store except as provided in subsection (E)(6)(b) of this section	One space per 350 square feet of floor area.
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The existing structure includes a total of 8,878 square feet. The current use in the existing structure has remained active over the past 12 months and is currently considered a non-

conforming use as the total parking required equals 25 spaces, and the total existing parking includes an unmarked gravel lot with area sufficient to accommodate roughly 18 total parking spaces.

The proposed Conditional Use is seeking to occupy 4,554 square feet of the existing structure, which in turn reduces the parking space requirement at 24 spaces total as the applicant states having two (2) employees.

***17.125.030 Alteration of nonconforming use or structure.***

***As used in this section, “alteration” of a nonconforming use or structure includes: (A) a change in the use of no greater adverse impact to the neighborhood; and/or (B) a change in the structure or physical improvements of no greater adverse impact to the neighborhood.***

***B. Major Alteration. A proposal for the alteration greater than 10 percent of the total square footage of a nonconforming use or structure may be approved by the planning commission subject to the provisions for conditional use permits. [Ord. 1037 § 1, 1997; Ord. 950 § 93, 1991.]***

As shown in the parking lot dimensions listed above, the proposed Conditional Use is of no greater adverse impact to the neighborhood as the parking requirement would remain nearly the same in required quantity. The location of the proposed Conditional Use is in close proximity to an existing Preschool Facility, Elementary School, recreation fields, and other similar uses related to childcare. The Development Review submitted concurrent with this application shows no alteration to the height, setback, or façade of the existing structure.

The proposed Conditional Use will alter the square footage of the existing nonconforming use by greater than 10 percent of the total square footage, triggering a decision by the Planning Commission regarding the continuance of the nonconforming use.

***17.125.060 Criteria to grant or deny.***

***When reviewing any request to alter or restore a nonconforming use, in addition to the conditional use criteria, it shall be determined that all of the following are found to exist:***

***A. The nature and character of the proposed use are substantially the same as that for which the structure was originally designed;***

***B. There is no material difference in the quality, character, or degree of use; and***

***C. The proposed use will not prove materially adverse to surrounding properties.***

***[Ord. 950 § 96, 1991.]***

***17.90.020 Off-street loading.***

***A. Passengers. A driveway designed for continuous forward flow of passenger vehicles for the purpose of loading and unloading children shall be located on the site of any school having a capacity greater than 25 students.***

ORS 414.350.0140 States:

**Indoor Area**

(1) The indoor area used for childcare shall meet the following requirements:

- (a) If the provider is certified to care for 12 children or fewer, there shall be a minimum of 35 square feet of indoor activity area, as defined by OAR 414-350-0010(1), per child. If the provider is certified to care for more than 12 children, there shall be a minimum of 35 square feet of indoor activity area per child for 12 or fewer children, and 50 square feet of indoor activity area available per child for each of the additional four children. This space, considered in determining capacity of the home, shall be available for use by children at all times.

Plans submitted by the applicant show a preschool classroom of 875 square feet. With 12 children at 35 square feet (420 square feet), the remaining 455 square feet would accommodate an additional nine children (1 child per 50 square feet). An additional school classroom and toddler classroom were also listed in the submitted plans with a combined total of 850 square feet, accommodating an additional 20 children. The combined total for capacity based on indoor activity area (as defined by OAR 414-350-0010(1)) is 41 children.

ORS 414-350-0120 - Caregiver/Child Ratios and Supervision limits the number of children per staff member.

(b) If children in care include any infants and/or toddlers, the following table determines the staff/child ratio.

<b>Table B</b>			
<b>When children in care include:</b>	<b>no group may exceed:</b>	<b>with a caregiver to child ratio of:</b>	<b>Notes</b>
one child under 24 months	12	1:8	If more than twelve children are in care and one is under 24 months, the group must be separated. Each group must meet the appropriate adult to child ratio.  Practice note: groups may be arranged to have the younger child in a separate group with 1:8 ratio. For other group use ratios in Table A if all children are the same age; Table C if mixed ages.
two children under 24 months	12	1:7	If more than twelve children are in care and two are under 24 months, the group must be separated. Each group must meet the appropriate adult to child ratio.  Practice note: groups may be arranged to have the

			younger children in a separate group with 1:7 ratio. For other group use ratios in Table A if all children are the same age; Table C if mixed ages.
three children under 24 months	12	1:6	<p>If more than twelve children are in care and over three are under 24 months, the group must be separated. Each group must meet the appropriate adult to child ratio.</p> <p>Practice note: groups may be arranged to have the younger children in a group with 1:6 ratio. For other group use ratios in Table A if all children are the same age; Table C if mixed ages.</p>
four or more children under 24 months	12	1:4	<p>If more than twelve children are in care and four are under 24 months; the group must be separated. Each group must meet the appropriate adult to child ratio and if more than 8 infants or toddlers are in care group size may not exceed 8.</p> <p>Practice note: groups may be arranged to have the younger children in a separate group with 1:4 ratios in Table A if all children are the same age; Table C if mixed ages.</p>

The plans submitted indicate 500 square feet devoted to “Infants”. The table above indicates that if the proposed Conditional Use enrolls only one child under 24 months, the ratio would limit be one caretaker per eight children. The applicant has indicated hiring a staff of two individuals. This statement by the applicant would allow only 24 children to be enrolled by the proposed Conditional Use.

Applicability of regulations regarding a continuous forward flowing driveway would be determined during the Development Review process, but should be considered during the Conditional Use review process due to the nonconforming layout and quantity of off-street parking areas and the use of the private drive to access these spaces.

#### ORS 414-300-0150 – Outdoor Space

This statute requires that:

1. There shall be an outdoor activity area, which the children can reach safely. If an outdoor area is not next to the center or not under the control of the center during hours of operation, it cannot be used without the specific approval of the State Child Care Division.
2. There shall be at least 75 square feet of outdoor space for each child using the area at one time. In centers where groups of children are scheduled at, different times for outdoor play, there shall be 75 square feet times one-third of the center’s capacity, if permitted by local zoning regulations.

4. The outdoor activity area of a center serving children not yet attending kindergarten shall be enclosed by a barrier (fence, wall or building) at least four feet high. Centers with certification in effect on July 15, 2001, must comply with a barrier at least three feet high until such time as the existing barrier is replaced. Spacing between vertical slats of a fence shall be no greater than four inches. Fences must meet applicable local codes.

The applicant has not submitted evidence of a required outdoor activity area required by this statute and will be required to do so as a condition of approval to meet this criterion.

### **AGENCY COMMENTS**

The request for agency comments or conditions of approval was mailed on September 26, 2014. Comments were received from Northwest Natural regarding this request. They stated there is a four (4) inch main in the alley. A copy of the form and responses are attached as Exhibit III.

### **PUBLIC COMMENT**

*JCMC 17.150.080 (B) states:*

*“With the exception of Type IV applications, notice of hearing or contemplated land use action shall be mailed to the applicant and to all owners and abutting property owners, including owners of property which would be abutting if there were not intervening streets, of the property which is the subject of the notice. In addition, notice shall be provided to all owners of record of property on the most recent property tax assessment roll within 300 feet of the subject property. Notice shall be mailed at least 20 days before the date of the hearing or review.”*

On September 26, 2014, staff mailed a notice of public hearing to the applicant, property owners and residents within 300 feet of the subject site. To date one verbal comment was received. A copy of the notice is attached as Exhibit VI.

Verbal comment received stated concerns regarding:

1. Outdoor play area location(s)
2. Drop-Off/Pick-Up points
3. Road speed and child safety
4. Signage along Juniper St. (e.g. Stop Signs, Reduced Speed signs, etc.) and short cutting through the applicant's property

### **PUBLIC HEARING**

**17.130.030(A). Public Hearing on Conditional Use.**



**Before the Planning Commission may act on a request for a conditional use, it shall hold a public hearing. The hearing shall be held within 40 days after the application for the conditional use is filed. Notice of the hearing and criteria for granting or denying a permit shall be as follows:**

**(1) JCMC [17.150.080](#), Notice.**

**(2) Based on the testimony provided at the hearing, the Planning Commission shall develop findings of fact to justify either approving or denying a conditional use permit. The Planning Commission may approve such requests when it is determined the request is in conformance with all the following requirements:**

- (a) The proposal is in conformance with the zoning ordinance;**
- (b) The property is adequate in size and shape to accommodate the proposed use, together with all other zoning requirements and any additional conditions imposed by the Planning Commission;**
- (c) Public facilities are of adequate size and quality to serve the proposed use; and**
- (d) The proposed use will prove, or can be made to be through imposing conditions, reasonably compatible with surrounding properties.**

### **POSSIBLE OPTIONS BY THE PLANNING COMMISSION**

The Planning Commission may grant or not grant the Conditional Use if the Planning Commission allows the use, conditions may be imposed to “protect the best interests of the surrounding property or the City as a whole” as stated above.

**The Commission may:**

1. Approve the Conditional Use Permit with conditions based on the proposed findings of fact.
2. Modify the Conditional Use Permit based on changes to proposed conditions and/or findings of fact.
3. Deny the Conditional Use Permit based on changes to the proposed findings of fact.
4. Continue the public hearing to a date certain if more information is needed.

### **ATTACHMENTS**

- I. Applicant’s Site Plan
- II. Application
- III. Agency Referral and Comment
- IV. Public Hearing Notice
- V. Map of State of Oregon Registered Child Care Centers in Junction City
- VI. Proposed Final Order CUP-14-02